
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
US Notary, Inc.)	File No. EB-00-TC-011
)	
Apparent Liability for Forfeiture)	NAL/Acct. No. X3217-006

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 27, 2000 Released: August 1, 2000

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that US Notary, Inc. (US Notary)¹ apparently willfully or repeatedly violated section 227 of the Communications Act of 1934, as amended (Act), and the Commission's rules and orders, by sending unsolicited advertisements to telephone facsimile machines.² Based on the facts and circumstances surrounding these apparent violations, we find that US Notary is apparently liable for forfeiture in the amount of \$90,000.³

¹ US Notary, Inc. is headquartered at 1033 Vista Sierra Dr, El Cajon, California. According to Dun & Bradstreet Business Information Report, US Notary began operations in 1998 and provides schooling or educational services, specializing in educational services on notary law. The owner of US Notary is Bruce Johnson. US Notary employs 8 people, including its owner. See Dun & Bradstreet Business Information Report, April 7, 2000.

² See 47 U.S.C. § 227; 47 C.F.R. § 64.1200(a)(3); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order*, 7 FCC Rcd 8752, 8779, ¶ 54 (1995) (*TCPA Report and Order*) (stating that Section 227 of the Act prohibits the use of telephone facsimile machines to send unsolicited advertisements).

³ 47 U.S.C. § 503(b)(1). The Commission has the authority under this section of the Act to assess a forfeiture against any person who has "willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act" See also 47 U.S.C. § 503(b)(5) (stating that the Commission has the authority under this section of the Act to assess a forfeiture penalty against any person who is not a common carrier so long as (A) such person is first issued a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission nearest to the person's place of resident; and (C) subsequently engages in conduct of the type described in the citation).

II. BACKGROUND

2. On July 12, 1999, in response to several consumer letters indicating that US Notary had faxed unsolicited advertisements, the Commission staff issued a citation to US Notary, pursuant to section 503 of the Act.⁴ Specifically, the staff cited US Notary for allegedly using a telephone facsimile machine, computer, or other device, to send unsolicited advertisements to a telephone facsimile machine, in violation of section 227 of the Act and the Commission's rules and orders. The unsolicited advertisements offered a "One Day Training Seminar" to become a Notary Public. The citation included copies of the consumer letters, and informed US Notary that subsequent violations could result in the imposition of monetary forfeitures of up to \$11,000 per violation.⁵ The citation informed US Notary that within 21 days of the date of the citation, it could either request a personal interview at the nearest Commission field office, or provide a written statement responding to the citation. The signed return receipt card shows that US Notary received the citation on July 17, 1999. The owner of US Notary, Bruce Johnson met with Commission staff on August 3, 1999. During that meeting, the staff advised Mr. Johnson that it is unlawful to send unsolicited advertisements to telephone facsimile machines, as defined by the Telephone Consumer Protection Act (TCPA) and the Commission's rules,⁶ and provided him with a copy of the TCPA.

3. Despite the citation and the subsequent August 3, 1999 meeting, the Commission has received several letters stating that US Notary continued to fax unsolicited advertisements.⁷

⁴ See 47 U.S.C. § 503(b)(5) (authorizing the Commission to issue citations to non-common carriers for violations of the Act or of the Commission's rules and orders).

⁵ The following consumer letters requesting Commission action were attached to the citation: (1) Linda Lehr, Request for Commission Action (February 23, 1999) (stating that a number of unsolicited advertisements were received via facsimile from US Notary); (2) Diana C. Heard, Request for Commission Action (June 7, 1999) (stating that she received facsimiles that contained unsolicited advertisements from US Notary); (3) George Kanaan, President of Sigma Marble and Granite, Inc. Request for Commission Action (June 7, 1999) (stating that he received a number of unsolicited faxes without his permission from US Notary); (4) David K. Zimmerman, Request for Commission Action (May 19, 1998) (stating that he received an unsolicited advertisement via facsimile from US Notary); and (5) Lynne C. Goldsand, Greenhaven Associates, Inc., Request for Commission Action, (June 17, 1999) (stating that she received two unsolicited advertisements via facsimile from US Notary).

⁶ See 47 U.S.C. § 227; 47 C.F.R. § 64.1200(a)(3).

⁷ See (1) William Pratt, Request for Commission Action (April 1, 2000) (stating that he received 1 unsolicited facsimile advertisements from US Notary in April 2000); (2) Roger Arrick, Owner of Arrick Robotics, Request for Commission Action (December 17, 1999, February 28, 2000, April 2000) (stating that he received 3 unsolicited advertisements by fax from US Notary in December 1999, March 2000 and on April 28, 2000); (3) Joe Shields, Engineering Specialist, Lockheed Martin/Johnson Space Center, Request for Commission Action (December 12, 1999, December 13, 1999, October 16, 1999, October 21, 1999, March 16, 2000) (stating that US Notary used a telephone facsimile machine to send 12 unsolicited advertisements to Johnson Space Center's fax machine in October and December 1999, and again in February and March 2000); (4) C. Brad Schuelke, Assistant Attorney General, Texas Attorney General's Office, Request for Commission Action (May 18, 2000) (stating that 2 unsolicited advertisements were faxed to the Texas Attorney General's Office); (5) David Guenthrer, The Lone Star Report, via the Texas Attorney General's Office, Request for Commission Action (May 18, 2000) (stating that he received 1 unsolicited advertisement by fax from US Notary); and (6) Bernice Tesmer, via the Texas

We base our action here on unsolicited advertisements that US Notary has sent since July 17, 1999, the day US Notary received the staff's citation.⁸

4. The Arrick Robotics Letter. Mr. Roger Arrick, owner of Arrick Robotics states that US Notary faxed an unsolicited advertisement to Arrick Robotics in December 1999, March 2000 and again on April 28, 2000.⁹ Mr. Arrick further states that at no time did he or anyone at Arrick Robotics give US Notary permission or invitation to send these faxes. Additionally, Mr. Arrick states that Arrick Robotics does not have an established business relationship with US Notary.¹⁰

5. The Joe Shields Letter. Mr. Joe Shields, a Systems Engineering Specialist who is employed by Lockheed Martin at Johnson Space Center, states that US Notary faxed unsolicited advertisements to Johnson Space Center on the following dates: (1) October 11, 1999; (2) October 12, 1999; (3) one fax between October 11, 1999 and October 16, 1999; (4) December 10, 1999 at approximately 9:41 a.m.; (5) December 10, 1999 at approximately 12:01 p.m.; (6) February 28, 2000 at approximately 9:47 a.m.; (7) February 28, 2000 at approximately 11:52 a.m.; (8) March 1, 2000; (9) two faxes on May 3, 2000 at approximately 3:05 p.m.; (10) two faxes on May 3, 2000 at approximately 3:06 p.m.¹¹ Mr. Shields states that neither he nor anyone else at Johnson Space Center gave US Notary permission to send advertisements to Johnson Space Center's fax machine. Mr. Shields further states that Johnson Space Center does not have an established business relationship with US Notary.

6. The Pratt Letter. Mr. William Pratt states that US notary sent an unsolicited advertisement to his telephone facsimile machine in April 2000. Mr. Pratt further states that the facsimile did not have a header.¹² Additionally, Mr. Pratt states that neither he nor anyone else authorized US Notary to send these faxes and that he does not have an established business relationship with US Notary.

Attorney General's Office, Request for Commission Action (May 18, 2000) (stating that she received 1 unsolicited advertisement by fax from US Notary). A letter was also received from the National Notary Association (NNC) regarding unsolicited advertisements faxed by US Notary to several NNC members. This letter, however, will not be used in assessing the forfeiture amount for US Notary because NNC's members did not file complaints.

⁸ We note that evidence of additional instances of unlawful conduct by US Notary may form the basis of subsequent enforcement action.

⁹ See Declaration of Roger Arrick, owner of Arrick Robotics.

¹⁰ *Id.*

¹¹ See Declaration of Joe Shields, Engineering Specialist, Lockheed Martin/Johnson Space Center.

¹² See Declaration of William Pratt.

7. The other faxes. The remaining consumer letters supporting this NAL were forwarded to us by the Texas Office of the Attorney General and are factually similar to the allegations in the consumer letters described above.¹³ US Notary also faxed two unsolicited advertisements to the Texas Office of the Attorney General.¹⁴

A. Violations Evidenced in the Letters.

8. Section 227(b)(1)(C) of the Act prohibits any person from using “a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.”¹⁵ An unsolicited advertisement is defined as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission.”¹⁶ The Commission has determined, however, that an established business relationship establishes consent to receive telephone facsimile advertisement transmissions.¹⁷ The mere distribution or publication of a telephone facsimile number does not confer invitation or permission to transmit advertisements to a particular telephone facsimile machine.¹⁸

9. Each facsimile transmission upon which this NAL is based describes the same commercial service, a “Notary Public One Day Training Seminar” with an “Early Registration Special,” “\$119.00 [for the] First Person (\$139 if postmarked [after a certain date]).” We find that these facsimiles fall within the definition of an unsolicited advertisement.¹⁹

10. The record indicates that none of the recipients of the faxes described in the letters had an established business relationship with US Notary, and there is no evidence that they

¹³ See *supra* note 7 (listing the consumer letters that form the basis for this NAL).

¹⁴ See C. Brad Schuelke, Assistant Attorney General, Texas Attorney General’s Office, Request for Commission Action (May 18, 2000).

¹⁵ 47 U.S.C. § 227(b)(1)(C). Section 227 defines a telephone facsimile machine as “equipment which has the capacity (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.” 47 U.S.C. § 227(a)(2); 47 C.F.R. § 64.1200(f)(4). This blanket prohibition applies to all unsolicited advertisements transmitted to any telephone facsimile machine, whether business or residential.

¹⁶ 47 C.F.R. § 64.1200(f)(5).

¹⁷ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Memorandum Opinion and Order*, 10 FCC Rcd 12391, 12408, ¶ 37 (1995) (*TCPA Memorandum Opinion and Order*).

¹⁸ *Id.*

¹⁹ An unsolicited advertisement is “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission.” 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(5).

gave US Notary permission or invitation to send the facsimile transmissions. Thus US Notary appears to have sent each facsimile transmission without the prior express invitation or permission of the recipient.

B. Forfeiture Amount.

11. We conclude that US Notary apparently willfully or repeatedly violated the Act and the Commission's rules and orders by using a telephone facsimile machine, computer, or other device to send unsolicited advertisements to telephone facsimile machines. US Notary apparently did not cease its unlawful conduct even after the Commission staff issued a citation warning that it was engaging in unlawful conduct and could be subject to monetary forfeitures and subsequently met with US Notary to discuss its unlawful conduct. Accordingly, a proposed forfeiture is warranted against US Notary for its apparent willful or repeated violations of section 227 of the Act and of the Commission's rules and orders regarding the faxing of unsolicited advertisements.

12. Section 503(b) of the Act authorizes the Commission to assess a forfeiture of up to \$11,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act by a non-common carrier or other entity not specifically designated in section 503 of the Act.²⁰ In exercising such authority, we are to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²¹

13. Although the *Commission's Forfeiture Policy Statement* does not establish a base forfeiture amount for violating the prohibition on using a telephone facsimile machine to send unsolicited advertisements, we have previously considered \$4,500 per unsolicited facsimile to be an appropriate base amount.²² We apply that base amount to each of the 20 apparent violations here. This results in a total proposed forfeiture of \$90,000. US Notary shall have

²⁰ Section 503(b)(2)(C) provides for forfeitures up to \$10,000 for each violation by cases not covered by subparagraphs (A) or (B), which address forfeitures for violations by licensees and common carriers, among others. See 47 U.S.C. § 503(b). The Commission amended its rules by adding a new subsection to its monetary forfeiture provisions that incorporates by reference the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. 104-134, Sec. 31001, 110 Stat. 1321, enacted on April 26, 1996. Thus, the maximum statutory forfeiture pursuant to section 503(b)(2)(C) increased from \$10,000 to \$11,000. See *Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 1038 (1997).

²¹ 47 U.S.C. § 503(b)(2)(D); *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17100-17101, ¶ 27 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

²² See *Get-Aways, Inc., Notice of Apparent Liability For Forfeiture*, 15 FCC Rcd. 1805 (1999; *Get-Aways, Inc., Forfeiture Order*, FCC 00-67 (released March 2, 2000).

the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.²³

III. CONCLUSION AND ORDERING CLAUSES

14. We have determined that US Notary apparently violated section 227 of the Act and the Commission's rules and orders by using a telephone facsimile machine, computer, or other device to send 20 unsolicited advertisements to the consumers identified above. We have further determined that US Notary is apparently liable for forfeiture in the amount of \$90,000.

15. Accordingly, IT IS ORDERED, pursuant to section 503(b)(5) of the Act, as amended, 47 U.S.C. § 503(b)(5), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that US Notary, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of \$90,000 for willful or repeated violations of section 227(b)(1)(C) of the Act, 47 U.S.C. § 227(b)(1)(C), sections 64.1200(a)(3) and 64.1200(f)(5) of the Commission's rules, 47 C.F.R. §§ 64.1200(a)(3), 64.1200(f)(5), and the related orders described in the paragraphs above.

16. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release of this Notice, US Notary, Inc. SHALL PAY the full amount of the proposed forfeiture²⁴ OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

17. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Bruce Johnson, Owner, US Notary, Inc., 1033 Vista Sierra Dr., El Cajon, California.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

²³ See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

²⁴ The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on US Notary's, Inc.'s check or money order to "NAL/Acct/ No. X3217-006." Such remittances must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.